IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1237 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SOMSABHAI MATHURBHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 1237 of 1993
MR KR RAVAL for Petitioner No. 1
MR HL JANI, APP, for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 22/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.C.PATEL)

1. The appellant was charged with giving an axe blow on the neck of his brother and causing his death. He was also alleged to have given an axe blow on the back of Sumitraben, the wife of the deceased, and on the head of Arvind Dahyabhai, who tried to intervene. The learned Additional Sessions Judge, Bharuch, who tried the appellant in Sessions Case No.55 of 1992, found him guilty of the offence punishable under Section 302 and 324 of the Indian Penal Code. He awarded life sentence for the offence under Section 302 and a sentence of six months' rigorous imprisonment for the offence punishable under section 324.

2. The incident in question occurred at about 7.30 in the evening on 12.9.1991 near the house of one Jethabhai Mangabhai in village Mayasi, taluka Nandod, district Bharuch. The prosecution case rested mainly on the evidence of two injured eye-witnesses, namely, Sumitraben Harilal (P.W.8), wife of the deceased, and Arvind Dahyabhai (P.W.9)., who is the brother in law of Sumitraben.

3. Sumitra's evidence shows that her father-in-law owned three acres of land, which he divided equally between her husband and the appellant. The land which came to their share was good in quality, but the land which came to the share of the appellant was a little stony. The appellant, therefore, often used to pick up quarrels with her husband. On the day of the incident, at about 7.30 in the evening, she and her husband were playing with the children in the courtyard of their house. At that time, the appellant-Somabhai Mathurbhai came out his house and started giving abuses to her husband on the question of land. At that time, her father-in-law, mother-in-law and Jethabhai came there and tried to persuade the appellant not to quarrel. However, the appellant got excited and brought an axe from his house and gave a blow on the neck of her husband. He gave another blow on the chest. Her husband-Harilal, therefore, fell down and died. The appellant also gave an axe blow on her back and then her sister's husband-Arvind came to her rescue. The appellant also gave him an axe blow on his head. Then the appellant ran away dropping the axe at some distance. The complaint was lodged by Jethabhai. She and Arvindbhai were treated in the Government Hospital, at Rajpipla and she was kept in the hospital for 12 days. Arvind was also kept in the hospital for 12 days.

4. Arvindbhai Dahyabhai(P.W.9), has also given evidence to the same effect.

5. The evidence of Dr. Mahesh Talpada, who performed the postmortem, shows that there was one wound on the neck and the muscle was cut and another on the chest. There also, the muscle was cut and the carotid vessels were cut. According to him, the death was due to shock following external haemorrhage following the cut of neck vessels. He said in his evidence that the injuries were sufficient in the ordinary course of nature to cause death and they could have been caused by the axe which was shown to him.

6. The evidence of Dr. Kamlesh Rathod (P.W.7), who was the Medical Officer at Rajpipla, shows that he examined Sumitraben at about 4 o' clock in the morning on 13.9.1991 and he found incised wound of 2 1/2" x 1/2" muscle deep on the back of right side of chest (right scapular region) and that she was treated as an indoor patient from 13.3.1991 to 24.9.1991. He also examined Arvindbhai and found incised would of 2" x 1/2" muscle deep, fresh on left parietal region and he was treated as an indoor patient from 13.9.1991 to 23.9.1991.

7. Thus, the medical evidence corroborates the evidence of Sumitraben and Arvindbhai that they had suffered injuries in the incident. Nothing has been brought out in their cross-examination and there are no circumstances on the record of the case which would render the evidence of these two injured eye-witnesses unworthy of credit. We see no reason to disbelieve or discard their evidence. Thus, the above evidence is sufficient to bring home the charge to the appellant. We are satisfied that the charge against the appellant is proved beyond reasonable doubt. There is no reason to interfere with the order of conviction and sentence passed by the learned Additional Sessions Judge. The appeal is, therefore, dismissed.

[M.C. PATEL, J.]

[A. L. DAVE, J.]

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